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No. 95-430

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

SIEMENS ENERGY & AUTOMATION, INC.,

Petitioner,

vs.

BRUCE W. STRAUSBERG, as Trustee of the ALLIS-CHALMERS CORPORATION PRODUCT LIABILITY TRUST,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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24 pp

TABLE OF CONTENTS

Page

Table of Citations ii

Counter-Statement of the Case 2

A. Counter-Statement of Facts 2

B. The Proceedings Before the Bankruptcy Court .. 4

C. Opinions Below 4

i. The Bankruptcy Court Decision 4

ii. The District Court Decision 5

iii. The Court of Appeals Decision 5

Summary of Argument 6

Reasons for Denying the Writ 7

I. The writ should be denied because this case does not conflict with any other decision of a United States Court of Appeals as to the scope of post-confirmation bankruptcy jurisdiction. 7

II. The writ should be denied because this case does not present significant legal issues or other special and important reasons for granting the writ. 12

A. The Second Circuit Decision Is A Summary Order Which May Not Be Relied Upon As Authority. 12

Contents

Page

B. The Second Circuit's Decision Will Have No Effect On The Bankruptcy System. 13

C. The Decision Below Does Not Present Any Constitutional Issue. 14

D. Ancillary Jurisdiction Exists Over The Trustee's Action. 15

Conclusion 17

TABLE OF CITATIONS

Cases Cited:

Caplin v. Marine Midland Grace Trust Co., 406 U.S. 416 (1972) 10

Celotex Corp. v. Edwards, 115 S. Ct. 1493 (1995) 14, 15

Curley v. Brignoli, Curley & Roberts Assocs., 915 F.2d 81 (2d Cir. 1990), *cert. denied*, 499 U.S. 955 (1991) 16

Eubanks v. Esenjay Petroleum Corp., 152 B.R. 459 (E.D. La. 1993) 15

Fireman's Fund Ins. Co. v. Siemens Energy & Automation, Inc., Adv. Proc. No. 92-9503A (S.D.N.Y. Apr. 13, 1993) 10, 11

In re Arnold Print Works, Inc., 815 F.2d 165 (1st Cir. 1987) 14

Contents

Page

In re Ben Cooper, Inc., 896 F.2d 1394 (2d Cir.), *judgment vacated*, 498 U.S. 964 (1990), *judgment reinstated*, 924 F.2d 36 (2d Cir.), *cert. denied*, 500 U.S. 928 (1991) 14

In re Bicoastal Corp., 164 B.R. 1009 (Bankr. M.D. Fl. 1993) 8

In re Joint Eastern & Southern Dist. Asbestos Litig. (In re Johns-Manville Corp.) 129 B.R. 710 (Bankr. S & E.D.N.Y. 1991), *judgment vacated*, 982 F.2d 721 (2d Cir. 1992), *opinion modified*, 933 F.2d 7 (2d Cir. 1993) 8, 13

In re Schepps Food Stores, Inc., 160 B.R. 792 (Bankr. S.D. Tex. 1993) 8

In re TGX Corp., 168 B.R. 122 (W.D. La. 1994) 8

Kokkonen v. Guardian Life Ins. Co. of America, 114 S. Ct. 1673 (1994) 16

McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985) ... 16

Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) 14

Pettibone Corp. v. Easley, 935 F.2d 120 (7th Cir. 1991) .. 8, 9, 10

Steinberg v. Buczynski, 40 F.3d 890 (7th Cir. 1994) 10

Contents

Page

Zerand-Bernal Group, Inc. v. Cox, 23 F.3d 159 (7th Cir. 1994) 7, 8, 9, 10

Statutes Cited:

11 U.S.C. § 350(a) 15

11 U.S.C. § 1142(b) 6, 8

28 U.S.C. § 157(b)(2) 14

Rule Cited:

Federal Rules of Bankruptcy Procedure, Rule 3022(d) ... 15

Rules of the United States Court of Appeals for the Second Circuit, § 0.23 (1994) 12

Other Authority Cited:

9 Collier on Bankruptcy ¶ 3022.03 (15th ed. 1994) 15

1 William L. Norton, Jr., *Norton Bankruptcy Law and Practice 2d* § 4:43 (1994) 9

APPENDIX

Appendix A — Relevant Statutes and Rules Involved ... 1a

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Bruce W. Strausberg, as Trustee of the Allis-Chalmers Corporation Product Liability Trust, respectfully submits this brief in opposition to the Petition for a Writ of Certiorari of Siemens Energy & Automation, Inc., dated September 6, 1995.

COUNTER-STATEMENT OF THE CASE

A. Counter-Statement of Facts

This action arises out of the Chapter 11 bankruptcy proceedings of the Allis-Chalmers Corporation and related entities (the "Debtors"), which commenced in June, 1987. The Debtors' First Amended And Restated Joint Plan Of Reorganization (the "Plan") was confirmed by the Bankruptcy Court on October 31, 1988. C.A. App. 70, 110.[1] One of the pivotal components of the Plan, and of the Debtors' ability to emerge from bankruptcy, was the creation of the Allis-Chalmers Corporation Product Liability Trust (the "Trust").

The Plan created the Trust in order to protect the Debtors from product liability claims to be filed in the future. The Allis-Chalmers Corporation Product Liability Trust Agreement (the "Trust Agreement"), which is an exhibit to the Plan, expressly provides that the "[a]greement is executed in order to *facilitate implementation of the Plan.*" C.A. App. 446 (emphasis added). It conferred upon the Trustee the rights and obligations of the Debtors with respect to product liability claims, and further authorized the Trustee to prosecute and participate in legal proceedings, including settling claims. However, the Trust Agreement requires the Trustee to obtain the approval of the Bankruptcy Court in order to settle claims in excess of $50,000. C.A. App. 453.

During the pendency of the Chapter 11 case, on or about February 29, 1988, Petitioner Siemens Energy & Automation, Inc. ("Siemens" or "Petitioner"), filed certain proofs of claim, each in the amount of $3,309,615. C.A. App. 463. In turn, the

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1. References to "C.A. App." are to the joint appendix filed in the court of appeals. "Petition" refers to the Petition for a Writ of Certiorari.

Debtors filed an Objection and Motion to Expunge Claim, and sought to offset various claims of their own against Siemens. Ultimately, these matters were compromised through a written agreement (the "Settlement Agreement"), which was approved by an Order of the Bankruptcy Court dated August 15, 1989 — ten months after confirmation of the Plan. C.A. App. 462, 485. The Settlement Agreement was annexed to the Order as an exhibit and incorporated by reference therein. Pet. App. 50a-52a.

In addition to resolving Siemens' claims in the bankruptcy, the Settlement Agreement resolved the various claims of the Debtors against Siemens, most if not all of which were derived from a prior Transfer Agreement between Siemens and Allis-Chalmers before Allis-Chalmers had filed bankruptcy. Under that Transfer Agreement, Siemens had obtained substantially all of the assets of the Electrical Products Group ("EPG"), of Allis-Chalmers. The Transfer Agreement had included a broad indemnification clause in favor of Allis-Chalmers as to claims that might arise from the conveyed assets, which was adopted in the Settlement Agreement in virtually identical terms. C.A. App. 56-57, 466-67. As a result, the Trustee became entitled to that broad indemnification since the Trust received such rights from the Debtors pursuant to the terms of the Trust Agreement.

In November 1990, a Siemens employee, Terence R. Rodriguez, was seriously injured at its plant in Mississippi while using an electrical regulator test bench. The test bench was one of the assets obtained by Siemens from EPG under the Transfer Agreement, thus implicating the indemnification agreement. C.A. App. 46, 177. Mr. Rodriguez, who suffered severe electrical burns and the loss of both arms, brought suit against Allis-Chalmers, for which the Trust was substituted (the "Rodriguez Action"). C.A. App. 775.

B. The Proceedings Before the Bankruptcy Court

Upon service of the complaint in the Rodriguez Action, the Trustee promptly requested, pursuant to the Settlement Agreement, that Siemens indemnify the Trust for the claims raised by that plaintiff. C.A. App. 489. In response, Siemens refused to defend and indemnify the Trust in the Rodriguez Action, despite the unambiguous language of the indemnification clause which obligates Siemens to indemnify the Trust for any claims "arising from, or relating to, the conduct of the business of the former [EPG], including, but not limited to" various aspects of EPG's business. C.A. App. 466-67.

The Trustee therefore commenced this action in the Bankruptcy Court to enforce the indemnification clause contained in the Settlement Agreement. C.A. App. 10. Despite the provisions of the Plan which expressly retained jurisdiction in the Bankruptcy Court for certain purposes, including "to determine any and all disputes arising under or relating to the Plan . . . [and] the Product Liability Trust Agreement . . ." and "to facilitate implementation of the Plan," Siemens moved to dismiss the action, arguing, *inter alia*, that the Bankruptcy Court lacked subject matter jurisdiction. C.A. App. 41. The Trustee, in addition to opposing the motion to dismiss, cross-moved for summary judgment on the indemnification agreement. C.A. App. 247, 511. Siemens then also cross-moved for summary judgment. C.A. App. 651.

C. Opinions Below

i. The Bankruptcy Court Decision

The Bankruptcy Court (Conrad, B.J.), issued a bench decision on July 8, 1993, by which it granted summary judgment to the Trustee on the indemnification claim. C.A. App. 1020.

With respect to the issue of subject matter jurisdiction, the court held that because the court retained jurisdiction over certain matters necessary or appropriate to aid in confirmation and to facilitate implementation of the plan, and because the bankruptcy court has a "strong interest in successful reorganization and supporting a plan," that jurisdiction existed over the Trustee's claims to enforce the indemnification agreement. C.A. App. 1024.

ii. The District Court Decision

Siemens filed an appeal of the Bankruptcy Court's Order and Judgment to the United States District Court for the Southern District of New York. C.A. App. 1088. The District Court (Owen, D.J.), after reviewing the matter *de novo*, affirmed the Bankruptcy Court on all grounds, holding in pertinent part that:

> [b]ecause of the obvious connection between the indemnification agreement in issue, the bankruptcy proceedings, and the Trust which remains under the supervision of the Bankruptcy Court, that Court had subject matter jurisdiction to decide this issue.

C.A. App. 1287.

iii. The Court of Appeals Decision

Upon Siemens' further appeal, the Court of Appeals for the Second Circuit affirmed, holding that "the interrelatedness of the Trustee's claim, the reorganization plan and the settlement agreement supports the bankruptcy court's exercise of jurisdiction." Pet. App. 3a.[2] Noting that post-confirmation

2. As in Siemens' petition, "Pet. App." refers to the appendix filed with the Petition for a Writ of Certiorari.

jurisdiction exists under Section 1142(b) of the Bankruptcy Code for the bankruptcy court to order a party to "perform any act . . . that is necessary for the consummation of the plan," the court recognized that: (1) the Trust was created as an "integral part of Allis-Chalmer's reorganization plan," (2) the Trust Agreement (an exhibit to the Plan), provided for exclusive bankruptcy court jurisdiction over the Trust, the Trustee and the Trust assets, and (3) that the settlement agreement was approved by and annexed to an order of the Bankruptcy Court. Pet. App. 3a-4a. The Second Circuit therefore held that "[b]ased upon the abundant evidence that the issues in this case are directly related to the bankruptcy proceedings and an order of the bankruptcy court . . . the bankruptcy court had subject matter jurisdiction over this dispute." Pet. App. 4a. The court expressly noted that it "found unpersuasive Siemens' argument that . . . there can be no 'related to' jurisdiction after confirmation." *Id.*

SUMMARY OF ARGUMENT

For several different reasons, this is a particularly inappropriate case for a Writ of Certiorari.

First, there is no conflict between the Circuits. The Second Circuit's decision is in accord with the decisions in each Circuit that has examined post-confirmation bankruptcy jurisdiction. The Seventh Circuit decisions upon which Petitioner purports to create a conflict are easily reconcilable with the instant case; those decisions accepted the same principles of law and merely applied those principles to very different facts.

Second, there is no novel legal issue here. The Second Circuit denominated its decision as a summary order, without precedential impact, in recognition that this case requires nothing but the application of familiar legal principles to the facts. Because there is no precedential impact to the decision below,

that decision can have no consequence on jurisdictional issues in other cases. Moreover, because the Second Circuit did not create a "new concept of post-confirmation jurisdiction" based upon plaintiff's status as a Trustee of a creditor trust, the perceived threat to the "efficient functioning" of the bankruptcy courts foreseen by Petitioner is simply not implicated by the holding below.

Finally, there exist two additional, independent bases for federal jurisdiction over this action besides bankruptcy jurisdiction. The lower court clearly had ancillary jurisdiction to enforce and interpret a settlement agreement that was physically annexed to its order of dismissal, especially where that order expressly recited that the terms of the settlement agreement were approved and that the order was entered based upon the settlement. Additionally, there is diversity jurisdiction between these parties. The presence of independent bases of jurisdiction means that any decision by this Court on the bankruptcy jurisdiction issues would have no effect on the judgment in this case and thus little effect in others.

REASONS FOR DENYING THE WRIT

I.

THE WRIT SHOULD BE DENIED BECAUSE THIS CASE DOES NOT CONFLICT WITH ANY OTHER DECISION OF A UNITED STATES COURT OF APPEALS AS TO THE SCOPE OF POST-CONFIRMATION BANKRUPTCY JURISDICTION.

The decision of the Court of Appeals does not conflict with decisions of other circuits. Siemens' attempt to create such a conflict between the Court of Appeals' decision and the decisions of the Seventh Circuit in *Zerand-Bernal Group, Inc. v. Cox*, 23

F.3d 159 (7th Cir. 1994), and *Pettibone Corp. v. Easley*, 935 F.2d 120 (7th Cir. 1991), not only misconstrues the decision in this case, but also the scope of the Seventh Circuit's decisions.

Siemens contends that the decision below "abandon[s] the earlier authority that bankruptcy jurisdiction after confirmation of a plan is limited to actions protecting the confirmation order, preventing interference with the implementation of the plan and otherwise aiding or effectuating the implementation of the plan." Petition at 20. To the contrary, as in the Seventh Circuit decisions relied upon by Siemens, the Second Circuit premised its decision on that very standard of jurisdiction, finding that the bankruptcy court, under 11 U.S.C. § 1142(b), had "post-confirmation jurisdiction . . . to require a party to 'perform any . . . act . . . that is necessary for the consummation of the plan.'"[3] There is thus nothing new or extraordinary about the legal basis underlying the Second Circuit's decision.[4]

The Second Circuit found that the "interrelatedness of the Trustee's claim, the reorganization plan and the settlement

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3. *See In re Joint Eastern & Southern Dist. Asbestos Litig.*, 129 B.R. 710 (Bankr. S & E.D.N.Y. 1991), *judgment vacated*, 982 F.2d 721 (2d Cir. 1992), *opinion modified*, 933 F.2d 7 (2d Cir. 1993) (jurisdiction of bankruptcy court continues post-confirmation to resolve matters concerning implementation or execution of a confirmed plan).

4. *See In re TGX Corp.*, 168 B.R. 122, 130 (W.D. La. 1994) (subject matter jurisdiction existed over post-confirmation suit by reorganized debtor against its former officers because "[t]he outcome of this litigation . . . could conceivably affect the estate"); *In re Schepps Food Stores, Inc.*, 160 B.R. 792, 796 (Bankr. S.D. Tex. 1993) (court had jurisdiction over post-confirmation adversary proceeding because outcome "could have a direct impact upon the Debtor's ability to consummate the plan of reorganization"); *In re Bicoastal Corp.*, 164 B.R. 1009, 1015 (Bankr. M.D. Fl. 1993) (court had post-confirmation jurisdiction where claim was "an integral part of the implementation of the Plan of Reorganization, and the liquidation process of the assets of this Debtor").

agreement supports the bankruptcy court's exercise of jurisdiction." Pet. App. 3a. Indeed, the Trustee's action was brought to enforce a post-petition agreement, approved by order of the Bankruptcy Court, between, among others, the Bankruptcy Court-created Trust and Siemens, which resolved certain claims of Siemens as a creditor, and of the debtor, Allis-Chalmers. The Trustee's action directly implicates the Plan. It was commenced by the Trustee, who acts subject to the Bankruptcy Court's supervision, according to the rights and duties conferred upon him under the Trust Agreement and the Plan. The Bankruptcy Court — which during the Debtors' Chapter 11 case had jurisdiction to resolve matters affecting the administration of the estate, including the litigation arising out of Siemens' proof of claim through its approval of the Settlement Agreement — expressly reserved jurisdiction over claims such as these which affect the implementation of the Plan, consistent with statutory jurisdictional limitations.[5] C.A. App. 87.

The Seventh Circuit in both *Pettibone* and *Zerand-Bernal* recognized that post-confirmation jurisdiction would exist in appropriate circumstances, including claims "related to" the reorganization or to ensure consummation of the plan. *Pettibone*, 935 F.2d at 122-23; *Zerand-Bernal*, 23 F.3d at 162. On the facts presented in those cases, such jurisdiction was found lacking; in

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5. The "Norton treatise" so extensively relied upon by Siemens in its Petition is not to the contrary. Norton writes that "[a]ll courts agree that confirmation of a plan does not automatically terminate the Bankruptcy Court's jurisdiction. According to the conventional formulation of the retained jurisdiction doctrine, the Bankruptcy Court's jurisdiction continues after confirmation 'to protect its [confirmation] decree, to prevent interference with the execution of the plan and to aid otherwise in its operation.'" 1 William L. Norton, Jr., *Norton Bankruptcy Law and Practice 2d* § 4:43, at 4-287 (1994) (citation omitted). The Second Circuit's finding that jurisdiction here is "necessary for the consummation of the Plan" is entirely consistent with Norton's "conventional formulation" of post-confirmation jurisdiction.

Pettibone, because it was the now-reorganized debtor which sought relief from certain state lawsuits which were expressly allowed to proceed under the plan, and in *Zerand-Bernal*, because the controversy was between two non-debtors, neither of whom was ever entitled to bankruptcy court protections. Both factual situations are inapposite to the situation presented here.[6]

Steinberg v. Buczynski, 40 F.3d 890 (7th Cir. 1994), also relied upon by Siemens, is also inapposite. The issue in that case was the bankruptcy trustee's lack of standing to assert "personal" as opposed to "general" claims on behalf of creditors within the bankruptcy case, consistent with *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972), and its progeny. The case has no relevance to the jurisdictional issues raised by Siemens in that its holding was premised upon the scope of a trustee's duties, not the limits of the court's jurisdiction.

Moreover, Siemens is disingenuous in referring to "an earlier decision by the same court (by a different bankruptcy judge)" which purportedly held to the contrary of the Second Circuit here. Petition at 8 n.4. In *Fireman's Fund Ins. Co. v. Siemens Energy & Automation, Inc.*, Adv. Proc. No. 92-9503A (S.D.N.Y. Apr. 13, 1993) (C.A. App. 548), which involved the very same Plan, Trust and indemnification clause at issue here —

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6. Siemens misconstrues the facts in *Zerand-Bernal* in stating that the plan, sale agreement and court orders at issue in that case provided that the sale of the debtor's assets would be "free of the very product liability claim asserted against the purchase, [thus] enjoining such claims...." Petition at 17. Had the plan actually provided as Siemens represents, the Seventh Circuit would likely have found that post-confirmation jurisdiction existed. In reality, though, the court found that the plan provided for sale of the assets free from all liens or other encumbrances, but that the product liability claim was not such a lien or encumbrance. The court therefore concluded on those facts that there was no support in the bankruptcy proceedings for the attempt at jurisdiction. *Zerand-Bernal*, 23 F.3d at 163.

but in which the Trust itself was not a party — the bankruptcy court held that jurisdiction was lacking because that suit involved two non-debtors and "resolution of this adversary proceeding would have no effect on the Debtors' estate *or the two Allis-Chalmers Trusts*." C.A. App. 574 (emphasis added). Because the instant matter, unlike the *Fireman's Fund* case, has an effect upon the Trust — and particularly, its ability to implement its obligations under the Plan — the instant matter presents the precise contrasting example offered by that bankruptcy court as to when post-confirmation jurisdiction *would* exist.

This is not a case where the Bankruptcy Court's retention of jurisdiction keeps reorganized debtors and estates in "perpetual tutelage," as in the cases relied upon by Siemens. Petition at 12. Those cases involve the retention of bankruptcy jurisdiction over a *debtor* — an ongoing profit-making business enterprise. This action, in contrast, concerns a bankruptcy Trust created to pay out specific creditor claims from a limited pool of money. Although the Bankruptcy Court retained the authority to supervise the Trust by the terms of the Plan and Trust Agreement, it did *not* retain such authority over the Debtors, *i.e.*, Allis-Chalmers and its subsidiaries. Indeed, the purpose of establishing the Trust was to release the Debtors from such tutelage and permit them to operate as reorganized concerns without the burden of product liability claims upon them.

II.

THE WRIT SHOULD BE DENIED BECAUSE THIS CASE DOES NOT PRESENT SIGNIFICANT LEGAL ISSUES OR OTHER SPECIAL AND IMPORTANT REASONS FOR GRANTING THE WRIT.

Siemens' Petition does not raise any significant legal issue for determination by this Court. There is no "new concept" of jurisdiction advanced by the Second Circuit in its decision. That decision merely reiterated and applied well-settled rules pertaining to the bankruptcy court's post-confirmation jurisdiction.

A. The Second Circuit Decision Is A Summary Order Which May Not Be Relied Upon As Authority.

The Second Circuit, by designating its unanimous decision as a "summary order," demonstrated its belief "that no jurisprudential purpose would be served by a written opinion. . . ." Rules of the United States Court of Appeals for the Second Circuit, § 0.23 (1994). Resp. App. 2a.[7] Thus, the decision may not be cited or otherwise relied upon by any person in any court. Because the Second Circuit's decision has no "jurisprudential purpose" and may not be cited as authority, the apocalyptic results mustered up by Siemens — an unending procession of trusts seeking post-confirmation relief in the bankruptcy courts, to the detriment of the bankruptcy system — simply cannot follow from that decision. No purpose is therefore served by review of the decision by this Court.

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7. "Resp. App." refers to the Appendix filed with this Brief in Opposition.

B. The Second Circuit's Decision Will Have No Effect On The Bankruptcy System.

Moreover, the ominous consequences threatened by Petitioner are simply not implicated by the Second Circuit's decision. Nothing in that decision permits trusts "to bring all of their post-confirmation disputes to the bankruptcy courts for resolution." Indeed, a trust created by a bankruptcy court exists solely by authority of that court as a means of effectively implementing a reorganization plan. It is therefore common, and proper, for the bankruptcy court to retain jurisdiction over it.

For example, in *In re Joint Eastern & Southern Dist. Asbestos Litig. (In re Johns-Manville Corp.)*, 982 F.2d 721 (2d Cir. 1992), *opinion modified*, 933 F.2d 7 (2d Cir. 1993), the Second Circuit explained that post-confirmation jurisdiction existed with respect to a trust like this one:

> [A Personal Injury Settlement] Trust is not an ordinary private undertaking of a settlor to carry out private preferences. It is the mechanism established under the auspices of the Bankruptcy Court to implement a plan of reorganization. The Bankruptcy Court has continuing responsibilities to satisfy itself that the Plan is being properly implemented.

Id. at 750. The Second Circuit's decision below is consistent with the bankruptcy court's authority to ensure that the plan is being properly implemented. The "efficient functioning of a nationwide bankruptcy system" is therefore not in any jeopardy as a result of the Second Circuit's decision.

C. The Decision Below Does Not Present Any Constitutional Issue.

Contrary to Siemens' exhortation that the Second Circuit's decision is somehow inconsistent with *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), the decision presents no issue with respect to the constitutional limits of the bankruptcy court's jurisdiction. That the subject matter of the Trustee's claim implicates state law does not defeat the subject matter jurisdiction of the Bankruptcy Court. Indeed, state law claims arising from post-petition agreements, like the Trustee's claim to enforce the Settlement Agreement here, have been held to be core proceedings. *See In re Ben Cooper, Inc.*, 896 F.2d 1394 (2d Cir.), *judgment vacated*, 498 U.S. 964 (1990), *judgment reinstated*, 924 F.2d 36 (2d Cir.), *cert. denied*, 500 U.S. 928 (1991); *In re Arnold Print Works, Inc.*, 815 F.2d 165 (1st Cir. 1987).[8]

Siemens overreaches in urging remand of this matter to the Court of Appeals in light of this Court's decision in *Celotex Corp. v. Edwards*, 115 S. Ct. 1493 (1995). The *Celotex* decision discussed the "related to" jurisdiction of the bankruptcy courts, but not in the post-confirmation context. Although Petitioner argues that the "effect on the estate" is the "linchpin" of "related

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8. Although the Bankruptcy Court held that the Trustee's issue was a "core" proceeding (*see* Pet. App. 14a), that issue quickly became moot because, upon appeal to the District Court (and to the Court of Appeals), the standard of review was *de novo*. Thus, even if the Bankruptcy Court had merely issued findings of fact and conclusions of law, the same would have been reviewed by the district court, to the same effect as here. Whether this action is or is not core is simply no longer relevant, and is not an issue worthy of this Court's attention. In any event, the Trustee's action, although implicating state law, is "intrinsic to estate administration," and "affect[s] the liquidation of the assets of the estate," pursuant to 28 U.S.C. § 157(b)(2), and thus is a core proceeding.

to" jurisdiction, this Court did not adopt such a test in *Celotex*. Indeed, this Court acknowledged that "'related to' jurisdiction . . . suggests a grant of some breadth." *Id.* at 1498-99 (footnote omitted). According to the Court, "the 'related to' language of § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simple proceedings involving the property of the debtor or the estate." *Id.* at 1499.

Consistent with this Court's interpretation of "related to" jurisdiction, the Second Circuit rejected Siemens' claim —now raised in the Petition — that "related to" jurisdiction ceases to exist after confirmation. Pet. App. 4a; Petition 25-26. That argument incorrectly presumes that confirmation is the concluding event in a Chapter 11 case. To the contrary, a bankruptcy case continues until an order closing the case is entered pursuant to § 350(a) of the Bankruptcy Code. Resp. App. 1a. *See* 9 Collier on Bankruptcy ¶ 3022.03, at 3022-3 n.4 (15th ed. 1994) ("Rule 3022(d) makes clear that administration of an estate may continue after confirmation"). The Debtors' Chapter 11 cases have not been closed. As such, the estate has not been fully administered, continues to exist, and could conceivably benefit from the Trustee's suit. *See Eubanks v. Esenjay Petroleum Corp.*, 152 B.R. 459, 463 (E.D. La. 1993) (rejecting contention that "related to" jurisdiction ceases to exist at confirmation).

D. Ancillary Jurisdiction Exists Over The Trustee's Action.

Moreover, whether the Bankruptcy Court had subject matter jurisdiction over this action is not a dispositive issue in this case. Both the Bankruptcy Court (and the District Court, which reviewed the case *de novo*), also had ancillary jurisdiction by which to enforce the Settlement Agreement (and the indemnification clause contained within it), which was expressly

approved by the Bankruptcy Court's order.[9] Recently in *Kokkonen v. Guardian Life Ins. Co. of America*, 114 S. Ct. 1673 (1994), this Court made clear that jurisdiction could be retained in a federal court to enforce a settlement agreement disposing of proceedings before it "by incorporating the terms of the settlement agreement in the order." *Id.* at 1677.

Consistent with the teaching of *Kokkonen*, ancillary jurisdiction exists on these facts because, as the Court of Appeals recognized, the Settlement Agreement, which resolved the bankruptcy claims of Siemens against the Debtors, was incorporated into the Bankruptcy Court's order and annexed to it. Pet. App. 4a; 50a. That order expressly provided that the Trust was "authorized and empowered . . . to implement and effectuate the Settlement Agreement approved hereunder." Pet. App. 4a. By these terms, the Bankruptcy Court incorporated the Settlement Agreement into its order, thereby retaining ancillary jurisdiction to determine disputes under the agreement.[10] The

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9. Diversity jurisdiction would provide yet another basis for jurisdiction in the district court. The complaint alleges (and Siemens admitted in its Answer) that Siemens is a Georgia corporation. C.A. App. 11, 19. The Trust, and the Trustee, are citizens of Wisconsin. C.A. 142, 459. The amount in controversy in this declaratory judgment action by the Trustee, which seeks to obtain defense costs and indemnification in the Rodriguez Action, far exceeds $50,000. *See* C.A. App. 1177-78 (representing Siemens' Agreement to deposit $100,000 in escrow pending appeal, for estimated defense costs underlying Trustee's claim). Diversity jurisdiction thus provides a fully sufficient, additional basis for subject matter jurisdiction. *See Curley v. Brignoli, Curley & Roberts Assocs.*, 915 F.2d 81, 84-85 (2d Cir. 1990), *cert. denied*, 499 U.S. 955 (1991) (circuit court may look to unpleaded bases of federal subject matter jurisdiction and may regard complaint as amended if record as a whole establishes diversity of citizenship).

10. The Seventh Circuit has held that there is no "magic form of words that the judge must intone in order to make the retention of jurisdiction effective. All that is necessary is that it be possible to infer that he did intend to retain jurisdiction. . . ." *McCall-Bey v. Franzen*, 777 F.2d 1178, 1188 (7th Cir. 1985).

Court therefore need not even consider the bankruptcy jurisdiction issue raised by Petitioner.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be denied.

Dated: October 6, 1995

Respectfully submitted,

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APPENDIX A — RELEVANT STATUTES AND RULES INVOLVED

TITLE 11, UNITED STATES CODE BANKRUPTCY

Section 350. Closing and reopening cases

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

* * *

Section 1142. Implementation of plan

* * *

(b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 3022. Final Decree in Chapter 11 Reorganization Case

After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.

Appendix A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PART I. RULES RELATING TO THE ORGANIZATION OF THE COURT

§ 0.23 Dispositions in Open Court or by Summary Order

The demands of an expanding case load require the court to be ever conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition will be made in open court or by summary order.

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Where disposition is by summary order, the court may append a brief written statement to that order. Since these statements do not constitute formal opinions of the court and are unreported or not uniformly available to all parties, they shall not be cited or otherwise used in unrelated cases before this or any other court.